

December 15, 1997

By Hand Delivery

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Reply of the Telecommunications
Resellers Association to BellSouth's
Motion to Strike Portions of Reply Comments
Raising New Arguments and/or Including New Evidence
CC Docket No. 97-208

Dear Ms. Salas:

Pursuant to Public Notice, FCC 97-330 (released September 19, 1997), transmitted herewith, on behalf of the Telecommunications Resellers Association ("TRA"), are an original and eleven copies of the Reply of the Telecommunications Resellers Association to BellSouth's Motion to Strike Portions of Reply Comments Raising New Arguments and/or Including New Evidence in the above-referenced matter. A diskette containing TRA's Reply formatted in WordPerfect 5.1 is also enclosed.

If you should have any questions concerning this matter, please do not hesitate to contact me at (202)293-2590.

Respectfully submitted,

Catherine M. Hanman

Catherine M. Hanman

Enclosures

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**Application of BellSouth Corporation,
BellSouth Telecommunications, Inc.
and BellSouth Long Distance, Inc. for
Provision of In-Region, InterLATA
Services in South Carolina**

CC Docket No. 97-208

**REPLY OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION
TO BELL SOUTH'S MOTION TO STRIKE
PORTIONS OF REPLY COMMENTS**

The Telecommunications Resellers Association ("TRA"), through undersigned counsel, hereby replies to the motion filed by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. (collectively "BellSouth") to strike from the record portions of TRA's reply comments filed in the above captioned matter. BellSouth alleges that TRA's reply comments raise new arguments that are not directly responsive to arguments raised by other commenters. TRA disagrees; all of TRA's reply comments respond directly to the comments of Ameritech Corporation ("Ameritech") and US WEST, Inc. ("US West").

In a shotgun filing, BellSouth contends that TRA and other parties opposing its application for "in-region," interLATA authority "have submitted new arguments and evidence that

could have been presented in initial comments and do not answer any comments filed by other parties."¹ Specifically with respect to TRA, BellSouth contends that after "tipping its hat to commentors," TRA never "engages them, instead offering a new argument of its own regarding the rulings of the Eight Circuit."² BellSouth complains that it thereby "has been denied an opportunity to respond to these new claims in its reply filing."³ BellSouth's proposed solution is to strike the offending portion of TRA's reply comments.⁴

BellSouth is absolutely correct that the Commission has admonished parties not to raise in their reply comments "new arguments or include new data that are not responsive to arguments other participants have raised."⁵ BellSouth is flat out wrong that a portion of TRA's reply comments was not directly responsive to comments submitted by Ameritech and U S WEST in support of BellSouth's application.

In their comments in support of BellSouth's application to provide in-region, interLATA services in South Carolina, both Ameritech and US West argued vigorously that the Commission was precluded by the U.S. Court of Appeals for the Eight Circuit's ("Eighth Circuit")

¹ BellSouth Motion to Strike at 1.

² Id. at 8.

³ Id. at 1.

⁴ Id. at 2.

⁵ "Comments Requested on Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana," Public Notice, DA 97-2330, Att., p. 7 (November 6, 1997).

*Order on Petitions for Rehearing in Iowa Utilities Board v. FCC*⁶ from considering in its evaluation of BellSouth's application the carrier's admitted failure to make available to new market entrants existing combinations of network elements. Indeed, Ameritech succinctly stated its position in titling Part II of its argument:

The Commission Has No Authority To Require Applicants For Section 271 Authorization To Provide, At Cost-Based Rates, Existing Combinations of Network Elements In The Applicant's Network.⁷

Ameritech elaborates on this view in the three pages that follow this heading, asserting, for example, that:

Pursuant to the Court's amended opinion, the Commission does not have the authority to order the Bell operating companies -- or any incumbent LEC -- to provide existing network elements combinations in the incumbent's network. *Accordingly, the Commission no longer may impose this requirement as a condition of granting a Section 271 application.*⁸

While U S WEST directed its arguments against a Motion to Dismiss the BellSouth application filed by AT&T Corp. and LCI International Telecommunications Corp., its refrain was the same as

⁶ 1997 U.S. App. LEXIS 28652 (8th Cir., Oct. 14, 1997), *pet. for cert. pending sub. nom AT&T Corp. v. Iowa Utilities Board* (Nov. 17, 1997).

⁷ Comments of Ameritech on Application by BellSouth to Provide In-Region, InterLATA Services in South Carolina, filed in CC Docket No. 97-208 on October 20, 1997 at 8 ("Ameritech Comments") (emphasis added).

⁸ *Id.* at 9.

Ameritech's -- *i.e.*, the Eighth Circuit has fenced-off a Bell Operating Company's ("BOC's") refusal to make available existing combinations of network elements from Commission consideration.⁹

In responding to these contentions, TRA, while acknowledging that the Eighth Circuit had held that Section 251(c)(3) does not require incumbent local exchange carriers ("LECs") to make available "assembled platform(s) of combined network elements (or any lesser existing combination of two or more elements),"¹⁰ demonstrated that the Commission could nonetheless consider a BOC's failure to do so in assessing whether the public interest would be served by grant of "in-region," interLATA authority to the BOC. TRA explained that "Congress granted the Commission broad discretion under the public interest requirement in section 271 to consider factors relevant to the achievement of the goals and objectives of the 1996 Act." and that "[t]he 1996 Act's overriding goal is to open all telecommunications markets to competition."¹¹ Moreover, TRA continued, because Congress "require[d] incumbent LECs, including BOCs, to share their networks in a manner that enables competitors to choose among three methods of entry into local telecommunications markets, including those methods that do not require a new entrant, as an initial matter, to duplicate the incumbent's networks," the Commission's "public interest analysis of a section 271 application, consequentially, must include an assessment of whether all procompetitive entry strategies are

⁹ Comments of U S WEST, Inc. in Support of Application by BellSouth for Provision of In-Region, InterLATA Services in South Carolina, filed in CC Docket No. 97-208 on October 20, 1997 at 8 ("U S WEST Comments").

¹⁰ 1997 U.S. App. LEXIS 28652

¹¹ Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, FCC 97-298, ¶¶ 10, 385 (Aug. 19, 1997).

available to new entrants."¹² Finally, TRA added, the Commission has correctly concluded that "limitations on access to combinations of unbundled network elements would seriously inhibit the ability of potential competitors to enter local telecommunications markets through the use of unbundled elements, and would therefore significantly impede the development of local exchange competition."¹³ In short, TRA argued that the Commission would be on solid ground in considering a BOC's failure to make available to new market entrants existing combinations of network elements in assessing whether the public interest would be served in granting the BOC authority to enter the "in-region," interLATA market.

As is painfully apparent, the TRA arguments of which BellSouth complains are in fact "directly responsive to arguments other participants have raised." Ameritech and U S WEST argued that the Commission could no longer consider a BOC's failure to deliver existing combinations of network elements; TRA showed that the Commission's public interest analysis was broad enough to encompass consideration of this failure. BellSouth's motion, accordingly, should not only be summarily denied, but the carrier should be admonished to refrain from any further filings of this nature. It is bad enough that BellSouth has wasted the Commission's and the industry's

¹² Id. at ¶¶ 13, 387.

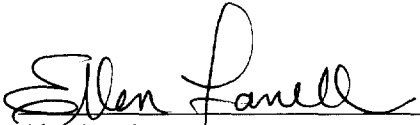
¹³ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499, ¶¶ 10 - 23 (1996) ("Local Competition First Report and Order"), *recon.* 11 FCC Rcd. 13042 (1996), *further recon.* 11 FCC Rcd. 19738 (1996), *further recon.*, FCC 97-295 (Oct. 2, 1997), *aff'd in part, vacated in part sub. nom. Iowa Utilities Board v. FCC*, Case No. 96-3321, 1997 WL 403401 (8th Cir. July 18, 1997) ("Iowa Utilities Board"), *rehearing* (Oct. 14, 1997), *pet. for rev. pending sub. nom., Southwestern Bell Telephone Co. v. FCC*, Case No. 97-3389 (Sept. 5, 1997).

time with a facially premature application. The carrier should not be permitted to compound this sin by submitting harassing pleadings.

For the foregoing reasons, the Telecommunications Resellers Association urges the Commission to reject that portion of BellSouth's Motion to Strike Portions of Reply Comments Raising New Arguments and/or Including New Evidence addressed to TRA's reply comments.

Respectfully submitted,

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December 15, 1997

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CERTIFICATE OF SERVICE

I, Ellen C. Farrell, hereby certify that copies of the foregoing document were mailed this 15th day of December, 1997, by United States First Class mail, postage prepaid, to the individuals on the attached service list.


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